

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
WASTEWATER DISCHARGE AUTHORIZATION PROGRAM

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February 4, 2010

Ms. Heidi Firstencel
U.S. Army Corps of Engineers
CEPOA-RD
8800 Glacier Highway, Suite 106
Juneau, AK 99801-8079

RE: POA-2000-495-M3 Gastineau Channel Douglas Harbor Improvements

Dear Ms. Firstencel:

On December 8, 2009, the U.S. Army Corps of Engineers (Corps) issued a Public Notice of Application for Permit under Section 404 of the Clean Water Act; reference number POA-2000-495-M3. On January 12, 2010, the Corps issued an extension of the comment period to February 5, 2010. The Alaska Department of Environmental Conservation (ADEC) has been involved in pre-application discussions with the City and Borough of Juneau, the Corps, and the U.S. Environmental Protection Agency (EPA) for this project for many months.

ADEC has the following comments with regard to the Public Notice for POA-2000-495-M3:

1. Thank you for extending the comment period to provide agencies and the public additional time to develop their comments. ADEC requests that after the close of the comment period that the Corps provide ADEC with one copy of each of the comments submitted on this project. The reason for this request is that it is our experience that many times people will submit comments to the Corps on a project but will not submit them to ADEC.
2. In our letter of December 24, 2009, ADEC requested that a public hearing be held for this application. If the Corps decides not to have a public hearing we request that the Corps specifically consider during their 404(b)(1) evaluation the unique nature of the proposed activity (the discharge of dredged sediments with elevated levels of mercury), whether or not there is a personal use fishery near the disposal area and the potential impact of this

disposal area on that use (this was not fully discussed during the pre-application meetings), and detailed consideration of possible alternative methods of disposal.

3. ADEC submitted a request to the applicant for additional information through the Division of Coastal and Ocean Management. ADEC will use the additional information prior to making our decision on the 401 certificate of reasonable assurance for this proposed activity. We believe the applicant will be sending the Corps copies of the additional information.
4. In the initial Public Notice the Corps gave a preliminary determination that the proposed activity would be subject to MPRSA (which was a change from the previous Corps position). In the Public Notice the Corps asked for comment on that position.

In a letter dated January 6, 2009 (we believe this date is in error it should be 2010) David J. Sullivan of the United States Department of State sent you a letter about the baseline question posed in the Public Notice of December 8, 2009. Mr. Sullivan cites relevant minutes from a January 19, 2006 Baseline Committee meeting that the closing lines depict that the project disposal area is landward of the closing line and that is the position of the federal government, notwithstanding the fact that the closing line is not depicted on NOAA nautical charts.

On January 6, 2010 Meredith Westington of the National Oceanic and Atmospheric Administration (NOAA) sent you a letter about the baseline question posed in the Public Notice of December 8, 2009. Ms. Westington also cites the relevant minutes from the January 19, 2006 Baseline Committee meeting that Mr. Sullivan cited.

ADEC consulted with the Alaska Department of Law on the preliminary determination by the Corps that the proposed activity would be subject to MPRSA. In light of the letters from the Department of State and NOAA of January 6, 2010, the State of Alaska believes the "closing line" issue and the jurisdiction of MPRSA raised in Public Notice POA-2000-495-M3 has been resolved in favor of the State of Alaska's understanding of the site specific conditions. In the event the Corps of Engineers raises the issue in subsequent Public Notice's the State of Alaska reserves the right to provide more detailed comments at that time.

If you have any questions about these requests and comments please contact me at the phone number listed above or at william.ashton@alaska.gov.

Sincerely,



William Ashton, Section Manager
Stormwater & Wetlands

cc: Carrie Bohan, ADNR, DCOM
Joe Hitselberger, ADF&G
Chris Meade, EPA
Chiska Derr, NMFS
Teri Camery, CBJ

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